

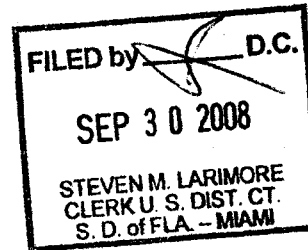
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
08-2091 CR-SEITZ MAGISTRATE JUDGE
CASE NO. O'SULLIVAN
18 U.S.C. § 371

UNITED STATES OF AMERICA

vs.

MARIO TURCOTTE
and
DANIEL PAUL O'BRIEN,

Defendants.



INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

Internal Revenue Code

1. The Internal Revenue Service is an agency of the United States Department of the Treasury and is responsible for administering and enforcing the tax laws of the United States.
2. The Internal Revenue Code contains laws for the taxation of income. Under these laws, individuals, sole proprietorships, partnerships, corporations, and trusts are generally required to report income to the Internal Revenue Service on income tax returns.
3. Each quarter, a business employer with no agricultural employees must file the Employer's Quarterly Federal Tax Return, Form 941, a form that reports the wages paid, tips that an employee has reported, federal income tax withheld, Social Security and Medicare taxes paid and withheld, and advance earned income credit payments. A separate Form 941 must be filed for each

quarter.

4. An employer, other than a household or agricultural employer, is required to file an Employer's Annual Federal Unemployment Tax Return, Form 940, if the employer paid \$1,500 or more in wages during any calendar quarter in the prior or current year, or the employer had at least one employee work for some part of a day in any 20 or more different weeks in the prior year or 20 or more different weeks in the current year.

5. The Federal Insurance Contributions Act tax, or "FICA," is an employment tax imposed by the federal government on both an employee and employer to fund Social Security and Medicare (federal programs that provide benefits for retirees, the disabled, and children of deceased workers). Social Security benefits include old-age, survivor, and disability insurance. Medicare provides hospital insurance benefits. An employer reports this tax by filing the Form 941 with the Internal Revenue Service.

6. The Internal Revenue Code imposes a tax rate on a wage earner's employment income equal to 6.2% for Social Security and 1.45% for Medicare. An employer must also pay an excise tax equal to 6.2% of wages paid to an employee for old-age, survivors and disability insurance and 1.45% of wages paid to an employee for hospital insurance. An employer must collect these taxes each time his employee's wages are paid.

7. The Federal Unemployment Tax Act, or "FUTA," is an unemployment tax imposed by the federal government on an employer to fund state workforce agencies. An employer must report this tax by filing a Form 940 with the Internal Revenue Service. The Internal Revenue Code imposes a 6.2% tax on an employer for the first \$7,000 of an employee's gross earnings for calendar years 1988 through 2007. This tax ceases once an employee's earnings exceed \$7,000. Certain

credits are allowed with respect to state unemployment taxes paid. An employer reports this tax by filing the Form 940 with the Internal Revenue Service. Together with state unemployment tax systems, the FUTA tax provides funds for paying unemployment compensation to workers who have lost their jobs.

The Florida Workers' Compensation System

8. The Florida Workers' Compensation Law, that is, Florida Statute Sections 440.10(1)(a) and 440.38(1), requires that any general contractor, contractor or subcontractor who engages in any public or private construction in the state must secure and maintain adequate Workers' Compensation insurance. Failure to maintain the required Workers' Compensation insurance in Florida is a felony under Florida Statute Section 440.105(4)(a) and (f).

9. In establishing the Florida Workers' Compensation Law, it was the intent of the state legislature to assure the quick and efficient delivery of disability and medical benefits to injured workers and to facilitate the worker's return to gainful reemployment.

10. In Florida, the bidding among contractors and subcontractors in the construction industry is competitive and contracts are generally awarded to the lowest bidder. The use of illegal or unauthorized laborers is a cost-saving measure.

11. An employer obtains Workers' Compensation insurance by purchasing the coverage from an insurance company. The premium or cost of a Workers' Compensation policy is calculated by a formula which takes into consideration three factors: (1) the inherent risk of injury for the type of work being covered, which is expressed as the "rate"; (2) the number of employees engaging in that type of work, which is expressed as the "payroll"; and (3) the employers' history of medical claims, which is referred to as the "experience." In high risk or dangerous work occupations, such

as roofing construction, the rate for Workers' Compensation coverage can be as high as 50% of the payroll itself.

12. In order to bind coverage and to calculate the premium, a Workers' Compensation insurance company requires the applicant employer to submit an application for coverage in which the employer identifies the type of work being conducted and the amount of his anticipated annual payroll. The insurance company relies on the truthfulness of those representations in order to correctly calculate the premium. The Workers' Compensation insurance company, during the policy year, may also conduct an audit of the employer's payroll and employment tax records.

Defendants

13. Defendant **MARIO TURCOTTE** owned and operated Powertech Interiors, Inc. (hereinafter "Powertech"), a drywall installation and cabinetry company with its principal place of business located at 560 S.W. 12th Avenue in Pompano Beach, Florida.

14. Defendant **DANIEL PAUL O'BRIEN** served as a partner at Powertech.

CONSPIRACY (18 U.S.C. § 371)

1. Paragraphs 1 through 14 of the General Allegations section of this Information are realleged and incorporated as though fully set forth herein.

2. From on or about December 28, 2001, and continuing through on or about August 2, 2007, in the Southern District of Florida, and elsewhere, the defendants,

MARIO TURCOTTE
and
DANIEL PAUL O'BRIEN,

did willfully, that is, with intent to further the objects of the conspiracy, and knowingly combine,

conspire, confederate, and agree with another person or persons, known and unknown to the United States Attorney, to commit an offense against the United States, that is:

(a) to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the United States Department of the Treasury in the ascertainment, computation, assessment, and collection of the revenue, to wit, employment taxes;

(b) to knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and causing to be delivered certain mail matter by the United States Postal Service and any private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1341.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators, through Powertech, to: (a) maintain certain employees as "off-the-books" and pay their wages in cash in order to underreport the company's taxable wages and, consequently, underpay the actual employment tax due and owing to the Internal Revenue Service; and (b) avoid paying Workers' Compensation insurance for the "off-the-books" employees by mailing underreported payroll figures to Bridgefield Employers Insurance Co., which relied upon the company's fraudulent payroll figures to assess a lower insurance premium.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to

accomplish the objects and purpose of the conspiracy included, but were not limited to, the following:

4. Co-conspirators incorporated for-profit companies under the laws of the State of Florida and obtained federal employer identification numbers. The co-conspirators used the companies as shell entities to, on paper, provide labor services to construction contractors and sub-contractors throughout Florida, including, but not limited to, Powertech.

5. Powertech, at the direction of **MARIO TURCOTTE** and **DANIEL PAUL O'BRIEN**, paid the wages for a selection of its employees by cash, but failed to report these employees to the Internal Revenue Service for purposes of calculating federal employment taxes due and owing. Powertech issued checks to the shell companies to explain and justify the employees' cash payments.

6. The co-conspirator shell company operators negotiated the checks at check-cashing establishments and returned the cash to Powertech less a percentage fee. **MARIO TURCOTTE** and **DANIEL PAUL O'BRIEN** also jointly received a percentage fee of each check amount. Powertech distributed the remaining cash wages to its employees.

7. Powertech, at the direction of **MARIO TURCOTTE** and **DANIEL PAUL O'BRIEN**, underreported its employees' taxable wages in the Employer's Quarterly Federal Tax Returns (Forms 940 and 941) by excluding from calculation the wages paid in cash.

8. Powertech, at the direction of **MARIO TURCOTTE** and **DANIEL PAUL O'BRIEN**, obtained Workers' Compensation insurance from Bridgefield by mailing self-audits that underrepresented Powertech's annual payroll. The payroll figures, which were consistent with the company's tax filings, failed to include the "off-the-books" employees who received cash wages.

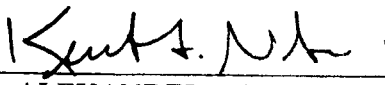
Bridgefield relied upon the payroll figures and assessed Powertech a lower insurance premium.

OVERT ACTS


In furtherance of the conspiracy and to achieve the objects thereof, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

1. On or about January 30, 2004, **MARIO TURCOTTE** signed the Employer's Quarterly Federal Tax Return, Form 941, on behalf of Powertech for the third quarter of 2003 that reported taxable wages as \$56,364.19.
2. On or about March 19, 2004, **MARIO TURCOTTE** signed a check on behalf of Powertech payable to L.E.I. totaling \$9,754.
3. On or about February 17, 2006, **DANIEL PAUL O'BRIEN** signed a check on behalf of Powertech payable to C.G.R.I. totaling \$6,890.
4. On or about May 1, 2007, **MARIO TURCOTTE** caused to be delivered by the United States Postal Service or any private or commercial interstate carrier a Workers' Compensation insurance premium self-audit to Bridgefield on behalf of Powertech.

All in violation of Title 18, United States Code, Section 371.



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



JEFFREY E. TSAI
ASSISTANT UNITED STATES ATTORNEY